



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

AUG 17 1994

PEP - ENVIRONMENTAL REVIEW MEMORANDUM NO. ERM94-4

To: Heads of Bureaus and Offices
From: Director, Office of Environmental Policy and Compliance
Subject: Section 4(f) of the Department of Transportation Act

The Secretary has identified, by the attached letter of June 20, 1980, to the Secretary of Transportation, those park and recreation areas, wildlife and waterfowl refuges and historic sites which are under Interior's direct and indirect jurisdiction and which are significant within the context of Section 4(f) of the DOT Act (49 U.S.C. 303, formerly 49 U.S.C. 1653 [f]).

This guidance should be provided to all Departmental officials who have land management or program responsibilities for those areas and resources to which Section 4 (f) would apply, in addition to those personnel who normally review DOT NEPA/4 (f) documents.

This memorandum replaces ER80-2.



Jonathan P. Deason

Attachment

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable Neil Goldschmidt
Secretary
U.S. Department of Transportation
Washington, D. C. 20590

JUN 20 1980

Dear Secretary Goldschmidt:

I am aware of your concerns to expedite the planning process for transportation projects. To the fullest extent we can, I want my Department to assist you in that effort.

It has been our observation, principally with highway projects, that certain delays can be traced to resolution of questions concerning (1) what constitutes land falling under the provisions of Section 4(f) of the DOT Act and (2) whether or not such land is significant within the meaning of Section 4(f).

In order to be helpful and to assist in expediting your transportation project-planning process, a list has been developed identifying areas pursuant to my jurisdictional responsibility as the Federal official for making determinations of significance in accordance with Section 4(f) of the DOT Act, 49 U.S.C. 1653(f). That responsibility is contained in the following provision:

"After August 23, 1968, the Secretary [of Transportation] shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless" [emphasis added]

The Solicitor of this Department advises that our jurisdiction extends to any public park, recreation area, or wildlife and waterfowl refuge within the scope of the Department's statutory responsibilities and that these responsibilities extend to certain State or locally owned (in fee, less than fee, lease, easement, or otherwise) parks, recreation areas or wildlife and waterfowl refuges. In addition, the Department's

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jurisdiction extends to sites which the Department determines to be of national, State, or local historic significance, regardless of ownership. See Stop H-3 Ass'n v. Coleman 533 F2d 434, 441 (1976) Cert. denied 429 U.S. 999 (1976). Jurisdiction to determine areas of national, State, or local historic significance includes any property "significant in American history, architecture, archeology, and culture." Id at 441 note 13.

Accordingly, the Department of the Interior declares the following listed lands as being significant parks, recreation areas, wildlife and waterfowl refuges and historic sites and therefore Section 4(f) would be applicable to all for any Department of Transportation use. The list has been developed consistent with my Solicitor's advice. However, this list may not be exhaustive and there may be other areas that have been inadvertently omitted or that may need to be evaluated on a case-by-case basis.

1. All lands or interests therein authorized, established, or administered as part of the National Park System.
2. All National Park Service "Affiliated Areas."
3. All lands or interests therein authorized, established, or administered as National Wildlife Monuments, or as part of the National Wildlife Refuge System, including Waterfowl Production Areas (wetland easements).
4. All lands or interests therein authorized, established, or administered as part of the National Fish Hatchery System.
5. All waters, lands, and interests therein acquired for mitigation purposes pursuant to the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e). Such lands and waters are in many cases administered by other Federal agencies, notably the Corps of Engineers, or by State agencies, pursuant to general planning authority (Sec. 663(b)). They may not be made subject to transactions that would "defeat the initial purpose of their acquisition." (Sec. 663(d)).
6. All lands or interests therein under the jurisdiction of the Water and Power Resources Service which are administered or which receive de facto use as parks, recreation areas, wildlife refuges, or historic sites.

7. All lands or interests therein under the jurisdiction of the Bureau of Land Management which are administered or which receive de facto use as parks, natural areas, natural systems (e.g., flood plains, wetlands, or riparian habitat), environmental education areas, cultural and historic areas, areas of critical environmental concern, recreation areas, or wildlife refuges, or which meet wilderness criteria or are wilderness study areas.
 8. All lands held in trust by this Department for the benefit of Indian Tribes which are administered by the Tribe as parks, recreation areas, wildlife refuges, or historic sites, or which receive similar de facto use.
 9. All local and State lands, and interests therein, and certain Federal lands under lease to the States, acquired or developed in whole or in part with monies from the Land and Water Conservation Fund Act. Such lands, and interests therein, are also subject to Section 6(f) of the Act requiring independent approval of conversion of use by the Secretary of the Interior.
 10. All recreation areas and facilities (as defined in Section 1004) developed or improved, in whole or in part, with a grant under the Urban Park and Recreation Recovery Act of 1978 (Title 10 of P.L. 95-625). Such recreation areas and facilities are also subject to Section 1010 of the Act which requires independent approval of the Secretary of the Interior (Heritage Conservation and Recreation Service) for a conversion to other than public recreation uses.
 11. All State lands and interests therein acquired or developed or improved for fish and wildlife conservation, restoration, or management with grants under the Pittman-Robertson Act, the Dingell-Johnson Act, Section 6 of the Endangered Species Act of 1973, and/or the Anadromous Fish Act of 1965 (including, but not limited to, State fish hatcheries, State wildlife conservation areas, and State game lands). For most of these lands, conversion to a non-designated use requires independent approval by the Secretary of the Interior.
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12. All Federal surplus real property which has been deeded to State and local governments for use and management as park demonstration areas, recreation areas, or wildlife conservation preserves and refuges, and all historic monuments and properties so deeded, under the Recreation Demonstration Act of 1942, or the Federal Property and Administrative Services Act of 1949, as amended. Most of these lands are also subject to independent approval of conversion of use by the Secretary of the Interior.
13. All abandoned railroad rights-of-way acquired by State and local governments for recreational and/or conservation uses with grants under Section 809(b) of the Railroad Revitalization and Regulatory Reform Act of 1976. Such lands are also subject to independent approval of conversion of use by the Secretary of the Interior.
14. All properties included in or eligible for inclusion in the National Register of Historic Places.
15. All areas publicly owned in fee, less than fee, lease, or otherwise, which receive de facto use as park, recreation, or refuge lands, and which are listed on the National Registry of Natural Landmarks^{1/}, the National Registry of Environmental Landmarks^{2/}, the World Heritage List (U.S. listings based on nominations by Secretary of the Interior^{3/}), or designated as Biosphere Reserves by the Secretary General, United Nations Educational, Scientific and Cultural Organization (after consultation with the Secretary of the Interior^{4/} and the Secretary of State).

De facto use, as mentioned above, will be determined on a case-by-case basis by the Interior bureau having statutory or program jurisdiction over or interest in the land in question. In the case of Indian trust lands, such determination will be made by us, in consultation with the appropriate Tribal officials. De facto use may also include publicly owned lands or interests therein proposed or under study for inclusion in the National Wild and Scenic Rivers System, the National Trails System, or the National Wilderness Preservation System, or as critical habitat for endangered or threatened species. Early coordination with this Department concerning

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- ^{1/} Program administered by Heritage Conservation and Recreation Service.
 - ^{2/} Program administered by National Park Service.
 - ^{3/} Handled by Heritage Conservation and Recreation Service.
 - ^{4/} Handled by National Park Service.
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applicability of Section 4(f) is especially important whenever lands administered by the Water and Power Resources Service or Bureau of Land Management, or whenever Indian trust lands (Tribal Officials/Bureau of Indian Affairs), are affected by DOT projects. Needless to say, such early coordination concerning other aspects of Section 4(f) is equally important when the lands and interest of our other bureaus are affected.

All of the above lands may also contain significant, but presently unknown or undesignated, historic or archeological sites or properties falling under the protection of Section 4(f). This will be determined on a case-by-case basis by the administering bureau/Tribal officials in consultation with the State Historic Preservation Officer (and/or others with historical expertise). Coordination with this Department, therefore, is also essential in this matter. Such coordination with reference to Section 4(f) should be in addition to (although it may be concurrent with) any coordination that may be required under Section 106 of the National Historic Preservation Act. We would note however, that each is independent of the other.

You may be assured that we stand ready to provide timely technical assistance in the preparation of Section 4(f) documentation for projects involving our lands or interests in lands. You realize, of course, that this Department must make an independent and separate (1) judgment of the need for use of its lands, or interests in lands, by a Department of Transportation program or project, as well as (2) documented determination of project compatibility with the purpose for which the land was acquired (as authorized by Congress) and is being managed.

Also, any approval of conversion of use or of transfers of land is an action requiring our compliance with the National Environmental Policy Act. Such compliance with NEPA would be satisfied by an environmental document prepared by the lead agency and approved by the appropriate bureau(s) in this Department [reference: 40 CFR 1501.5 and .6]. Again, we stand ready to provide timely technical assistance in the preparation of such documents.

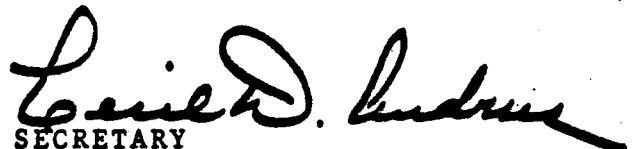
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There are, of course, other Section 4(f) properties over which the Department of the Interior has no direct or program jurisdiction, which should continue to receive Section 4(f) protection. These include, but are not limited to, community and village parks and playgrounds; State, county and regional park, recreation and refuge lands; school playgrounds open to general public use; State fairgrounds; and all properties determined to have State and local significant historic values, but which were determined not eligible for the National Register. This Department is committed to timely review of Section 4(f) statements prepared for such involvements.

I would appreciate it if you made the above information available to your operating administrations. Additionally, we hope you would instruct the Federal Highway Administration to have this letter included as an addendum to each State's Highway Action Plan, developed pursuant to 23 U.S.C. 109(h) and FHPM 7-7-1. Only with this broad distribution do we believe that the several administrative levels of a State highway agency will be cognizant of the contents of this letter and be able to work with you and us in expediting the planning process.

Thank you for your attention to this matter.

Sincerely,


SECRETARY

cc: Council on Environmental Quality

SECTION 4(f) of the DOT ACT

Section 4(f) of the Department of Transportation Act (80 Stat. 931; Public Law 89-670) as amended in Section 18 of the Federal-Aid Highway Act of 1968 (82 Stat. 815; Public Law 90-495).

"(f) It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use."

Section 4(f) is Codified in:

23 U.S.C. 138 and 49 U.S.C. 1653(f)

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